

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

John T. Metcalf, et al.

Plaintiffs,

v.

Sophocles N. Zoullas, et al.,

Defendants.

ECF Case

11 Civ. 3996 (AKH) (HBP)

ORAL ARGUMENT REQUESTED

DEFENDANTS' NOTICE OF MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that, upon the Defendants' Memorandum in Support of Summary Judgment, and the accompanying Rule 56.1 Statement of Uncontested Facts and the Declaration of Michael G. Bongiorno dated April 1, 2013 and the exhibits thereto, and on a date and time to be determined by this Court, defendants Douglas P. Haensel, Jon Tomasson, Joseph M. Cianciolo, David B. Hiley, Thomas B. Winmill, Forrest E. Wylie ("the Outside Directors"), and Sophocles N. Zoullas, Alexis P. Zoullas, and Alan S. Ginsberg ("the Executives") (collectively "Defendants") will move this Court for an order dismissing all counts of the Modified Shareholder Derivative Complaint pursuant to Rule 56 of the Federal Rules of Civil Procedure, and granting such other and further relief as the Court deems just and proper.

Dated: April 1, 2013

Respectfully submitted,

Wilmer Cutler Pickering Hale
and Dorr LLP

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Haensel, Jon Tomasson, Joseph M.
Cianciolo, David B. Hiley, Thomas B.
Winmill, and Forrest E. Wylie.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **“Defendants’ Notice of Motion For Summary Judgment”** was filed this 1st day of April, 2013, via this Court’s CM/ECF filing system, which gives electronic notice to all parties registered to receive such notice.

/s/ Michael G. Bongiorno
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